

Codington County/City of Watertown
Joint Planning Commission/Joint Board of Adjustment Minutes
May 18, 2020

The Codington County/City of Watertown Joint Planning Commission/Board of Adjustment met on May 18, 2020 via teleconference. Members of the Joint Planning Commission/Board of Adjustment participating were: Mark Stein, Mark O'Neill, Bob Fox, Brenda Hanten, Blake Dahle, and Luke Muller (Planner at First District Association of Local Governments/ Codington County Zoning Officer).

Others participating were Todd Florey, Jeff DeVille, Myron Johnson, Mel Ries, Rodney Klatt, Evan Brandlee, Ryhan Durham, Patrick Lynch, Shawna Constant, Nathan Constant, and Becky Goens.

Bob Fox brought the meeting of the Joint Board of Adjustment to order at 7:30 pm.

Motion by Hanten, second by O'Neill to approve the minutes of the March 16, 2020 meeting. Motion passed unanimously.

Motion by Stein, second by Hanten, to approve the agenda. Motion passed unanimously.

Motion by Hanten, second by Dahle, to approve the front and rear yard setback variance request for Todd Florey. Property is located on Lot 14B of Schwandt's Pelican View Subdivision and Lot 9 of Lots 1-13 Polze Subdivision, Section 17-T116N-R53W. Florey would like to construct a shed less than 65' from the right-of-way and rear property line. This shed will not have living quarters nor will it be used on conjunction with any business. Muller reviewed Staff Report (attached). Motion by Dahle, second by O'Neill, to amend the motion to construct not less than 25' to be in line with his neighbor. Motion on the amended motion passed unanimously. Motion on the request, with the amendment, passed unanimously.

Motion by Hanten, second by O'Neill, to approve the Maximum Size of Shed variance request for Todd Florey on property located on Lot 14B of Schwandt's Pelican View Subdivision and Lot 9 of Lots 1-13 Polze Subdivision, Section 17-T116N-R53W. Muller reviewed Staff Report (attached). Motion passed unanimously.

Motion Hanten, second by Dahle, to approve the Conditional Use Permit request by Todd Florey for an unattached garage with sidewalls greater than 10'. Property is located on Lot 14B of Schwandt's Pelican View Subdivision and Lot 9 of Lots 1-13 Polze Subdivision, Section 17-T116N-R53W. Muller reviewed Staff Report (attached). If approved, the applicant agrees to sign a Letter of Assurance agreeing to:

1. The proposed structure shall not be used for dwelling purposes.
2. A conditional use permit shall be required prior to the operation of any business in the proposed structure.
3. The applicant shall agree that the property upon which this shed is constructed shall be transferred in the future with the property owned by the applicant (marrying the two

properties). The two properties may only split in the future if the lot/structure are used for a Permitted Use, Conditional Use, or a use accessory to an adjoining lot which may be combined in a manner similar to this agreement.

4. Maximum sidewall height shall be limited to twelve (12) feet.

Chairman Fox read the Findings of Fact. There were no objections or questions. Motion passed unanimously.

Motion by Hanten, second by O'Neill, to approve the variance request by Evan Brandlee to construct 40' x 72' a shed with 16' sidewalls. Property is located on Lot 3 of the plat entitled Lots 2 & 3 of Lake City Subdivision, Section 12-T116N-R53W. Muller reviewed Staff Report (attached). If approved, the applicant agrees to sign a Letter of Assurance agreeing to the following conditions:

1. The proposed structure shall not be used for dwelling purposes.
2. A conditional use permit shall be required prior to the operation of any business in the proposed structure.
3. Maximum sidewall height shall be limited to sixteen (16) feet.

Motion passed unanimously.

Motion by Dahle, second by Hanten, to approve the variance request by Nathan Constant to construct a 40' x 60' shed with 14' sidewalls. Property is located on Lot 306 of South Air Haven Addition in SW1/4, Section 11-T116N-R53W. Muller reviewed Staff Report (attached). If approved, the applicant agrees to sign a Letter of Assurance agreeing to:

1. The proposed structure shall not be used for dwelling purposes.
2. A conditional use permit shall be required prior to the operation of any business in the proposed structure.
3. Maximum sidewall height shall be limited to fourteen (14) feet.

Motion passed unanimously.

Muller provided an update to the City of Watertown Comprehensive Land Use Plan. A joint meeting will be forthcoming.

At a previous meeting, the board directed Mike Alama to do some clean up on his lot as a condition to a Use on his property. Some personal issues have come up for Mr. Alama and therefore the clean up has not been completed. A letter will be sent to him with regard to completing this task.

Motion by Hanten, second by Dahle, to adjourn. Motion passed unanimously. Meeting was adjourned at 8:24 pm.

Respectfully Submitted,

Becky Goens

**MAY 2020
CODINGTON COUNTY/CITY OF WATERTOWN
JOINT BOARD OF ADJUSTMENT STAFF REPORT**

ISSUE #1

Applicant/Owner: Todd Florey

Property Description: Lot 14B of Schwandt's Pelican View Subdivision and Lot 9 of Lots 1-13 Polze Subdivision, Section 17-T116N-R53W, Codington County, South Dakota. (Pelican Township)

**Action Items – Variance – Front and rear yard setback on a lot not adjacent to the lake
Variance – Construct accessory building greater than 1,200 feet in area
(Table 3.07.04.3)
Conditional Use – Construct accessory building with 12 foot sidewalls
(3.07.03.5)**

Zoning Designation: Lake Park

Request: The applicant requests to construct a 40 x 60 shed with 12' sidewalls less than 65' from the right-of-way and rear property line.

Specifics of Property/Request:

1. Mr. Florey owns the lot across the road from his house with a 325 sq ft. shed on it.
2. The lot proposed to have the shed has 4 corners with sides of varying lengths.
3. He seeks to replace the small shed with a 40 x 60 shed with 12' sidewalls. The shop will not have living quarters within it, and is not proposed to be used in conjunction with any business.
4. Staff is not aware of any documentation formally tying the two above legally described properties together.

Ordinance/Variance History regarding this request:

Section 3.07.04.2

1. The Zoning Ordinance requires that lots not adjacent to the lake have setbacks of 65' from a right-of-way (same as Agricultural District) and 65' from the rear property line.
2. The required setbacks on this leave 653 buildable square feet (acute triangle). In other words, the required setbacks cover 94.75% of this lot.
3. This Board has a history of granting variances for lots in the Lake Park District where greater than 80% of the lot is covered by required setbacks.
4. The accessory structure on the adjoining lot is located approximately 30' from the right-of-way.

Table 3.07.04.3

1. In the Lake Park District, accessory buildings are limited by size as a function of lot area. If combining both the lot with the house and the lot with the proposed structure, the size of this lot limits the applicant's total area for accessory buildings to 1,200 sq ft. (Requesting 2,400 sq. ft.)
2. The Board has granted variance to this requirement (prior to Joint Jurisdiction for Lynn Engels in 2011; and last year to Thomas Brunick) subject to the following applicable conditions:
 - A. The proposed structure shall not be used for dwelling purposes.
 - B. A conditional use permit shall be required prior to the operation of any business in the proposed structure.
3. The largest shed on this side of the street is less than 1,200 square feet

4. Upon review of history, it was found the primary purpose of the size limitation is to discourage oversized structures adjacent to the lake, limit the likelihood of people reside in accessory structures, and to limit the likelihood of unpermitted businesses being operated.
 - a. Based upon this information staff recommends the Board consider attaching new conditions to limit the likelihood of those things happening:
 - i. This structure may not be connected to sewer or septic system.

Section 3.07.03.5

1. In the Lake Park District, accessory buildings are allowed to have sidewalls of greater than 10 (ten) feet in height by Conditional Use.
2. No specific conditions are listed for this use. The Board shall review whether the request complies with lighting, refuse (garbage), signage, utilities, access, and screening.
3. General Compatibility may be used as justification for attaching conditions. A maximum sidewall height may be an appropriate condition. Staff has no reason at the time of this report to limit the height of the sidewall to less than the requested twelve (12) feet.
 - A. In the case of Brunick (sidewalls were 4' taller than this structure), following contention from neighboring landowners the Board required tree plantings to screen the shed from adjoining property if requested by the affected property owner.
 - B. At the time of this report, staff does not recommend attaching a requirement to plant trees for screening. That is because this shed will have a sidewall height shorter than previously approved structures for which that requirement was added; and that no objections have been received at the time of this report.

Staff Recommendation:

- ***Variance to allow accessory structure without a primary structure:*** Staff recommends approval of the request to allow variance to front and rear setback requirements to allow a structure not less than 20' from the right-of-way and not less than 25' from the rear property line. Approval would be based upon:
 1. The unique size and shape of the lot.
 2. The ordinance creates a unique hardship on this property in that it renders 95% of the lot unbuildable due to setbacks without the variance(s).
 3. The Board has a history of granting variances to lots with a similar percentage of the lot covered by required setbacks.
 4. The Board would only consider approving other similar requests meeting the unique circumstances.
- ***Variance to allow accessory structure of greater than 1,200 sq ft:*** If approved the Board could use its history of granting similar variance(s) in the Lake Park, and the benefit of ensuring this nonconforming lot is used as accessory to an existing lot, rather than a new residential lot as justification for granting the variance. If denied, the Board could recognize that the existing structures in this neighborhood meet the maximum structure size and therefore granting may confer upon the applicant the ability to use the property in a manner not allowed to other properties. Should the Board approve the request approval should be subject to the applicant signing a letter of assurance agreeing to the following conditions:
 1. The proposed structure shall not be used for dwelling purposes.
 2. A conditional use permit shall be required prior to the operation of any business in the proposed structure.
 3. The applicant shall agree that the property upon which this shed is constructed shall be transferred in the future with the property owned by the applicant (marrying the two properties). The two properties may only split in the future if the lot/structure are used for a Permitted Use, Conditional Use, or a use accessory to an adjoining lot which may be combined in a manner similar to this agreement.

- **Conditional Use – Accessory structure with greater than 10’ sidewalls:** Should the Board approve the request, approval should be subject to the applicant signing a letter of assurance agreeing to the following conditions (the conditions in italics below are carried forward from the variance above. Number 3 below could be omitted if the size variance is denied):
 5. *The proposed structure shall not be used for dwelling purposes.*
 6. *A conditional use permit shall be required prior to the operation of any business in the proposed structure.*
 7. *The structure may not be connected to sanitary sewer or private wastewater (septic tank) without future approval by the Board of Adjustment.*
 8. *The applicant shall agree that the property upon which this shed is constructed shall be transferred in the future with the property owned by the applicant (marrying the two properties). The two properties may only split in the future if the lot/structure are used for a Permitted Use, Conditional Use, or a use accessory to an adjoining lot which may be combined in a manner similar to this agreement.*
 9. Maximum sidewall height shall be limited to twelve (12) feet.

ISSUE #2

Applicant/Owner: Evan Brandlee

Property Description: Lot 3 of the plat entitled “Lots 2 & 3 of Lake City Subdivision”, Section 12-T116N-R53W, Codington County, South Dakota. (Pelican Township)

Action Items – Variance – Construct accessory building with 16 foot sidewalls (5.14.1.2.c)

Zoning Designation: Rural Residential

Request: The applicant requests to construct a 40 x 72 shed with 16’ sidewalls.

Specifics of Property/Request:

1. Mr. Brandlee owns the above described 1.8 acre lot.
2. He seeks to construct a 40 x 60 shed with 16’ sidewalls. The shop will not have living quarters within it, and is not proposed to be used in conjunction with any business.
 - a. The overall area of the shop is not in question.
3. Numerous neighboring properties have sheds with sidewalls greater than 10.5’.
4. The application included written consent of all adjoining *residents*.

Ordinance/Variance History regarding this request:

1. Table 5.14.1.2 includes detail on accessory uses for residences, including sidewall height on detached garages (sheds).
2. The JJA-RR District is the only district in which there is not already a built in mechanism to allow sidewall heights to exceed the requirements of 10.5’.
3. No variances to this section have been issued in the Rural Residential - District since the creation of the “RR” District because:
 - a. Outside the Joint Jurisdiction Area, houses in the RR – District are not bound by the requirements of 5.14.1.2.c
 - b. The Zoning Officer was not aware the Joint Jurisdiction Ordinance carried this requirement to the RR – District
 - c. As the Board is aware, if this were in the Lake Park District, it would be a conditional use.

Staff Recommendation:

The Codington County Comprehensive Land Use Plan lays out the basis for the Rural Residential District. Given that property in the same zoning district outside the JJA throughout the county is allowed to have sheds without restriction on sidewall height, that numerous lots within the JJA-RR District already have structures with sidewall height exceeding 10.5'. The County has also adopted the previously adopted City Comp Plan as guidance for development in the JJA. The only justification for denial would be that, although not planned for future urban development within the next 20 years, eventually this property would be absorbed by the City of Watertown which doesn't allow for sidewalls of the proposed size. Otherwise this requirement could seem arbitrarily contrived. If approved, staff recommends instructing staff to draft an ordinance amendment to allow for sidewalls on accessory structures in the RR-District to exceed 10.5'.

Staff Recommendation:

- **Variance – Accessory structure with greater than 10' sidewalls:** The Board could approve the request, deny the request, or postpone the request.

The Board could approve the request based on the following:

- The restriction on sidewall height is not fully supported in neither the Codington County, nor City of Watertown Comprehensive Land Use Plans for this area nor the Joint Jurisdiction Area.
- The JJA-RR District is the only district in which there is not already a built in mechanism to allow sidewall heights to exceed the requirements of 10.5'.
- Denial of this variance would prohibit the applicant from using the property in a manner consistent with other properties in the district on a basis which the Board finds arbitrary.
- Therefore, the rest of the hardships necessary to grant a variance are also met.

The Board could Postpone the request until an ordinance amendment could be considered by the Planning Commissions and elected boards.

The Board could deny the request based on the following:

- All structures with sidewalls exceeding 10.5' were constructed prior to the adoption of the JJO and are thus nonconforming. (Be advised, the zoning officer cannot confirm at the time of this report that no structures have been built with 10.5' sidewalls in the JJA-RR District since the adoption of the JJO.)
- The decreased setback in the RR-District necessitate a limitation on sidewall height.
- Although not projected to grow/change in an urban manner for the City of Watertown, this portion of the Rural Residential District should be treated differently than those portions outside the JJA due to the eventuality of annexation.

Should the Board approve the request, approval should be subject to the applicant signing a letter of assurance agreeing to the following conditions (the conditions in italics below are carried forward from the variance above.

4. The proposed structure shall not be used for dwelling purposes.
5. A conditional use permit shall be required prior to the operation of any business in the proposed structure.
6. Maximum sidewall height shall be limited to sixteen (16) feet.

ISSUE #3

Applicant/Owner: Nathan Constant

Property Description: Lot 306 of South Air Haven Addition in SW1/4, Section 11-T116N-R53W, Codington County, South Dakota. (Pelican Township)

Action Items – Variance – Construct accessory building with 14 foot sidewalls (5.14.1.2.c)

Zoning Designation: Rural Residential

Request: The applicant requests to construct a 40 x 60 shed with 14' sidewalls.

Specifics of Property/Request:

1. Mr. Constant owns the above described 1.9 acre lot.
2. He seeks to replace the construct a 40 x 60 shed with 14' sidewalls. The shop will not have living quarters within it, and is not proposed to be used in conjunction with any business.
 - a. The overall area of the shop is not in question.
3. Numerous neighboring properties have sheds with sidewalls greater than 10.5'.
4. The application included written consent of all adjoining residents.

Ordinance/Variance History regarding this request:

1. Table 5.14.1.2 includes detail on accessory uses for residences, including sidewall height on detached garages (sheds).
2. The JJA-RR District is the only district in which there is not already a built in mechanism to allow sidewall heights to exceed the requirements of 10.5'.
3. No variances to this section have been issued in the Rural Residential - District since the creation of the "RR" District because:
 - a. Outside the Joint Jurisdiction Area, houses in the RR – District are not bound by the requirements of 5.14.1.2.c
 - b. The Zoning Officer was not aware the Joint Jurisdiction Ordinance carried this requirement to the RR – District
 - c. As the Board is aware, if this were in the Lake Park District, it would be a conditional use.

Staff Recommendation:

Same as for Issue #2.

Staff Recommendation:

- **Variance – Accessory structure with greater than 10' sidewalls:** The Board could approve the request, deny the request, or postpone the request.

The Board could approve the request based on the following:

- The restriction on sidewall height is not fully supported in neither the Codington County, nor City of Watertown Comprehensive Land Use Plans for this area nor the Joint Jurisdiction Area.
- The JJA-RR District is the only district in which there is not already a built in mechanism to allow sidewall heights to exceed the requirements of 10.5'.
- Denial of this variance would prohibit the applicant from using the property in a manner consistent with other properties in the district on a basis which the Board finds arbitrary.
- Therefore, the rest of the hardships necessary to grant a variance are also met.

The Board could Postpone the request until an ordinance amendment could be considered by the Planning Commissions and elected boards.

The Board could deny the request based on the following:

- All structures with sidewalls exceeding 10.5' were constructed prior to the adoption of the JJO and are thus nonconforming. (Be advised, the zoning officer cannot confirm at the time of this report that no structures have been built with 10.5' sidewalls in the JJA-RR District since the adoption of the JJO.)
- The decreased setback in the RR-District necessitate a limitation on sidewall height.
- Although not projected to grow/change in an urban manner for the City of Watertown, this portion of the Rural Residential District should be treated differently than those portions outside the JJA due to the eventuality of annexation.

Should the Board approve the request, approval should be subject to the applicant signing a letter of assurance agreeing to the following conditions (the conditions in italics below are carried forward from the variance above.

4. The proposed structure shall not be used for dwelling purposes.
5. A conditional use permit shall be required prior to the operation of any business in the proposed structure.
6. Maximum sidewall height shall be limited to fourteen (14) feet.

ITEM #4 ADMINISTRATIVE REPORT

- City of Watertown Comprehensive Land Use Plan Update (Approval)
- Amendment to Sidewall height in RR District (if necessary)